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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/010,965
Filing Date: December 07, 2001
Appellant(s): DATTA ET AL.

MAILED
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GROUP 3700

Melanie I. Rauch
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3-27-07 appealing from the Office action mailed March 9, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

It is noted that the claims were non-finally rejected in the Office Action mailed 3-9-05 but twice rejected.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

No amendment after final has been filed because the most recent rejection was a non-final rejection. An amendment after the most recent final rejection was filed on 5-19-04 but has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any,

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by reference characters. The brief is deficient because the portions of the specification referred to are incorrect.

A corrected Summary follows:

Specifically, independent claims on appeal are Claims 1, 40, 41, 42, and 43. None these independent claims nor any of dependent Claims 2-12 contain "means or step plus function language" and thus will not be addressed in this section. Independent Claim 1 is summarized as follows: an absorbent article 20 comprising: a front waist region 22, a back waist region 24, and a crotch region 26 extending between the waist regions 22, 24 (Page 14, lines 1-6; FIG. 4); a first ear panel 106 formed of a first material extending from a first edge portion of the front waist region 22 (Page 41, lines 1-14; FIG. 6); a second ear panel 107 formed of a second material different from the first material and extending from a first edge portion of the back waist region 24 (Page 41, lines 1-14; FIG. 6), the second material having a basis weight greater than a basis weight of the first material (Page 42, lines 17-19); and at least one manually tearable passive bond 70 connecting the first ear panel 106 and the second ear panel 107 together (Page 43, line 12 through page 44, line 6; FIG. 6). Independent Claim 40 is summarized as follows: an absorbent article 20 comprising: a front waist region 22, a back waist region 24, and a crotch region 26 extending between the waist regions 22, 24 (Page 14, lines 1-6; FIG. 4); a first ear panel 106 formed of a first material extending from a first edge portion of the front waist region 22 (Page 41, lines 1-14; FIG. 6); a second ear panel 107 formed of a second material different from the first material extending from a first edge portion of the back waist region 24 (Page 41, lines 1-14; FIG. 6); and at least one manually tearable passive bond 70 connecting the first ear panel 106 and the second ear panel 107 together (Page 43, line 12 through page 44, line 6; FIG. 6); wherein in disconnecting the first

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ear panel 106 from the second ear panel 107, the first ear panel 106 is damaged more than the second ear panel 107 (Page 7, lines 6-19; Page 43, line 12 through page 44, line 6; Example 2, pages 45-51). Independent Claim 41 is summarized as follows: an absorbent article 20 comprising: a front waist region 22, a back waist region 24, and a crotch region 26 extending between the waist regions 22, 24 (Page 14, lines 1-6; FIG. 4); a first ear panel 106 formed of a first material extending from a first edge portion of the front waist region 22 (Page 41, lines 1-14, FIG. 6); a second ear panel 107 formed of a second material different from the first material extending from a first edge portion of the back waist region 24 (Page 41, lines 1-14, FIG. 6); and at least one manually tearable passive bond 70 connecting the first ear panel 106 and the second ear panel 107 together (Page 43, line 12 to Page 44, line 6; FIG. 6); wherein the passive bond 70 can be torn without damaging the second ear panel 107 more than the first ear panel 106 (Page 7, lines 6-19; Page 43, line 12 through page 44, line 6; Example 2, pages 45-51). Independent Claim 42 is summarized as follows: an absorbent article 20 comprising: a front waist region 22, a back waist region 24, and a crotch region 26 extending between the waist regions 22, 24 (Page 14, lines 1-6; FIG. 4); a first ear panel 106 formed of a first material extending from a first edge portion of the front waist region 22 (Page 41, lines 1-14; FIG. 6); a second ear panel 107 formed of a second material different from the first material extending from a first edge portion of the back waist region 24 (Page 41, lines 1-14; FIG. 6); and at least one manually tearable passive bond 70 connecting the first ear panel 106 and the second ear panel 107 together (Page 43, line 12 through page 44, line 6; FIG. 6); wherein the first ear panel 106 can be disconnected from the second ear panel 107 without negatively affecting a tensile strength of the second ear panel 107 (Page 7, lines 6-19; Page

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43, line 12 through page 44, line 6; Example 2, pages 45-51). Independent Claim 43 is summarized as follows: an absorbent article 20 comprising: a front waist region 22, a back waist region 24, and a crotch region 26 extending between the waist regions 22, 24 (Page 14, lines 1-6; FIG. 4); a first ear panel 106 formed of a first material extending from a first edge portion of the front waist region 22 (Page 41, lines 1-14; FIG. 6); a second ear panel 107 formed of a second material different from the first material extending from a first edge portion of the back waist region 24 (Page 41, lines 1-14; FIG. 6); and at least one manually tearable passive bond 70 connecting the first ear panel 106 and the second ear panel 107 together (Page 43, line 12 through page 44, line 6; FIG. 6); wherein the first ear panel 106 can be disconnected from the second ear panel 107 without negatively affecting a tensile strength of the first ear panel 106 (Page 7, lines 6-19; Page 43, line 12 through page 44, line 6; Example 2, pages 45-51).

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,622,589	JOHNSON et al	04-1997
6,036,805	McNICHOLS	03-2000
5,226,992	MORMAN	07-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Language Interpretation

The first and second ear panels are not required to be formed of only the first and second materials, respectively, so the first and second ear panels are not required to have different basis weights only a respective first and second material thereof is. The first and second materials are not required to be a single layer or only one kind of material (Note claim 10). The terminology “passive bond” is defined as set forth on page 10, lines 1-3 and 4-5, i.e. a bond which has a relatively low peel strength such that the bond can be easily broken by hand if desired to assist in inspecting or removing an absorbent article from the wearer and without causing trauma to the wearer or spillage of waste materials from the absorbent article. It is noted that the language “relatively low” and “easily” are considered relative. It is also noted that the claim terminology “manually” is considered redundant, see definition of “passive bond”. It is noted that the terminology “passive bond” does not require tearing or damage or the lack thereof, i.e. as “passive bond” is defined the capability of the bond to be broken with or without tearing or damage is set forth as a preference not a requirement absent specific claim language requiring such, i.e. see the last sections of claims 40-43. The portion of the definition of “passive bond”, i.e. “to assist...article” supra recites function, capability or property of the “passive bond”. It is also noted that the claim language does not require direct connection of the ear panels together by the “passive bond”. The claims do not require a side seam or seal which include the front ear panel or/and the first material passively bonded to a back ear panel or/and the second material or

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that tearing the bond totally disconnects the front ear panel from the back ear panel. Additionally in claims 40 and 42-43, the terminology “disconnecting” in the wherein clause is considered to refer back to the terminology “connecting” in the subsection prior to the wherein clause, i.e. the disconnection refers to that of the at least one passive bond.

Ground 1:

Claims 1, 8 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by, or, in the alternative, under 35 USC 103(a) as being obvious over Johnson et al ‘589

With regard to all the claims, see Figures 3-3A, then see Figures 5-7, then see Figure 4. Also see Figures 1-2 and 8, col. 3, lines 56-60, col. 6, line 16-col. 8, line 44 and col. 9, lines 6-42 (Note col. 7, line 53 and col. 9, line 13, “joining means 205” is incorrect and should be --joining means 300-- to be consistent with the remainder of the reference, i.e. the front waist region is 56, the back waist region is 54, the crotch region is 57, the first ear panel is 202 with or without 205 or 200 with or without 205, the second ear panel is 200 without or with 205, respectively, or 202 without or with 205, respectively, and the bond is “joining means” 300, see again, e.g., Figures 4 and 5 and col. 7, lines 53-57 (Note a tearable 205 could also be used as 205 in the embodiment of Figure 4 or, alternatively, the ear panels in Figure 5 could be folded as shown in Figure 4, see col. 7, lines 57-59). The material of the ear panels are “different” materials, see again, for example, the Figures, the paragraph bridging cols. 7-8, and col. 7, lines 2-37, i.e. again one of the panels includes 205 and one does not.

With regard to claims 1 and 8, the claim requires the second material having a basis weight greater than the basis weight of the first material. However since one of the ear panels

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includes element 205 and one does not (note Appellant's argument in the Appeal Brief that elements 200 and 202 each without 205 are the same), the basis weight of the one ear panel including element 205 is or obviously is greater than the other ear panel which does not include 205.

With regard to the functions, properties and capabilities of the "passive bond" as defined in the independent claims, see claim language interpretation section *supra*, i.e. "The portion of the definition of "passive bond", i.e. "to assist...article" *supra* recites function, capability or property of the "passive bond", the Johnson device includes or obviously includes all the structure of the claims. Therefore there is sufficient factual basis for one to conclude that the functions, properties and capabilities of the claimed structure are also inherent in, see MPEP 2112.01, or necessarily and inevitably present in the same structure of Johnson. Especially note Figure 8 which shows tearing of the bond of Johnson increases the size of the waist opening, i.e. would or necessarily and inevitably assist in inspecting or/and removal.

With regard to the last subsections of claims 40-43, see portions of Johnson et al cited *supra*, especially the folding in Figures 3-4, col. 7, lines 57-59, the folding and element 205 in Figures 5-7, col. 9, lines 17-24, i.e. the ear panel not including element 205 remains in the same form, i.e. is not damaged or the tensile strength is not negatively affected. The elements 200, 202 have a tensile strength such that 205 will tear before 200, 202 do, see again col. 9, lines 28-30. Also note col. 9, lines 20-24. Therefore, since that one of the ear panels is not damaged or its tensile strength is not negatively affected, such ear panel is affected or damaged less than the other ear panel.

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With regard to the last subsection of claim 40, see col. 7, lines 6-12 and col. 6, lines 23-28 and Figures 5-7, i.e. the front one of 200, 202 can be unitary with 205, i.e. front panel/bond torn but rear panel is not.

Ground 2:

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson '589.

Claims 2-6 require a specific basis weight of at least one of the materials and claim 7 requires a specific tensile strength of the second material. While the criticality of different basis weights of first and second materials of front and rear ears passively bonded to each other directly to form side seams is disclosed, the criticality of specific basis weights and tensile strengths has not been disclosed. As discussed supra, the general conditions of the claims are taught by the prior art, i.e. materials of different basis weights forming panels bonded together. Therefore, since the general conditions are disclosed by the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Aller*, 105 USPQ 233.

Ground 3:

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being obvious over Johnson et al in view of McNichols, '805, and thus also Morman '992.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37

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CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP 706.02(l)(1) and 706.02(l)(2).

In claims 9-10 Appellant claims specific first and second materials of the panels. It is noted that the claims do not limit the panels or materials thereof only to the specified materials, or in other words the ears and materials can include additional elements. In claims 11-12 Appellant claims specific peel strengths. The Johnson et al reference does not explicitly teach such. It is noted however that Johnson et al do teach readily tearable side bonds and that the ear panels can be any material known in the art that is suitable for use in disposable articles which may be joined together by a seam. However, see McNichols at col. 16, lines 6-24 and col. 13, lines 15-30, and thereby Morman at Figure 5, Example 3, col. 6, lines 47-54, col. 8, lines 30-40, i.e. a material known in the art suitable for use in disposable articles includes point bonded nonwoven materials as claimed in claim 9 and laminates as claimed in claim 10 and readily

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tearable bonds of such material have peel strengths as set forth in claims 11 and 12. To employ the materials and peel strengths as taught by McNichols on the Johnson et al device would be obvious to one of ordinary skill in the art in view of the recognition that such materials are known materials in the art suitable for use in disposable articles and that such peel strengths between such materials provide readily tearable bonds and the desire by Johnson to employ any material known in the art that is suitable for use in disposable articles and to provide bonds with such material that are readily tearable.

(10) Response to Argument

Ground 1:

Appellant's arguments on pages 6-12 have been considered but are deemed not persuasive because such are narrower than the teachings of Johnson and/or the claim language, Applicant's attention is again invited to the Claim Language Interpretation section supra and the discussion of Johnson in the prior art rejection supra. For example, the teachings at the portions of Johnson cited supra (e.g., col. 6, lines 29-30 clearly discloses that the first member and second member may be separate members, i.e. not of the same web, col. 7, lines 6-10 discloses that 205 can be part of one of the members and col. 8, lines 4-6 discloses that such members, i.e. each material of the laminate 220, may be a layer or laminate, i.e. at least two layers, of same or different materials) are contrary to Appellant's arguments at, e.g., the sentence bridging pages 7-8, the paragraph bridging pages 8-9, page 9, lines 9-11. Furthermore, the claims, i.e. "a panel formed of a first material" and "a panel formed of second material different than the first material" (emphasis added), do not require a first panel of a single material or a single layer of material and a second panel of a single material or single layer of material different from that of

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the first panel, nor a first panel of a first material and a second panel of a second material in which no material of the first material is the same as a material of the second material (Note the Claim Language Interpretation section *supra*) contrary to Appellant's arguments at, e.g. the paragraph bridging pages 8-9. Finally, the bond defined by the claims, see the Claim Language Interpretation section, is taught by Johnson, see rejection *supra*, contrary to the Appellant's arguments in the last full paragraph on page 9.

The rejection of claims 1, 8 and 40-43 under 35 U.S.C. 102(b) as being anticipated by, or, in the alternative, under 35 USC 103(a) as being obvious over Johnson et al '589 is deemed proper and maintained.

Ground 2:

Appellant's arguments bridging pages 12-13 that since Johnson does not teach or suggest the general conditions for the reasons discussed with respect to Ground 1 *supra*, it does not teach or suggest the basis weight limitations of claims 2-6 or the peak load tensile strength have been considered. However, such arguments are deemed not persuasive for the same reasons as advanced in Ground 1 *supra*.

The rejection of claims 2-7 as being unpatentable under 35 U.S.C. 103(a) over Johnson '589 is deemed proper and maintained.

Ground 3:

Appellant's arguments bridging pages 13-15 that since Johnson does not teach or suggest the general conditions for the reasons discussed with respect to Ground 1 *supra* and thereby, one

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would not be motivated to combine its teachings with that of McNichols or that McNichols does not overcome the deficiencies of Johnson have been considered. However, such arguments are deemed not persuasive for the same reasons as advanced in Ground 1 supra.

The rejection of claims 9-12 as being unpatentable under 35 U.S.C. 103(a) over Johnson '589 in view of McNichols, '805, and thus also Morman '992, is deemed proper and maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

K. M. Reichle



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